

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

Track One Cases

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**TEVA, CEPHALON, AND ACTAVIS LLC'S OBJECTIONS
TO PLAINTIFFS' SECOND AMENDED DESIGNATED STREAM WITNESSES**

Pursuant to the Civil Jury Trial Order, ECF No. 1598, entered in *In re National Prescription Opiate Litigation* (MDL 2804) on May 1, 2019 (as amended on July 29, 2019), Teva Pharmaceuticals, USA, Inc. ("Teva"), Cephalon, Inc. ("Cephalon"), and Actavis LLC ("Actavis") hereby submit the following Objections to Plaintiffs' Second Amended Designated Stream Witnesses.

Teva, Cephalon and Actavis object to the Plaintiffs' designation of former employee, Andy Pyfer, as a live stream witness as to Teva/Cephalon. Mr. Pyfer is no longer on any parties' witness list. On the contrary, Plaintiffs struck him from their live stream designation when ordered by the Court to reduce the number of witnesses on the parties' witness lists. Plaintiffs should not be permitted to add new witnesses at this late hour. We are on the eve of trial, and the lists are now set in stone, as they should be.

On October 5, 2019, Plaintiffs served amended live stream and witness lists pursuant to this Court's October 1, 2019 Order Regarding Exhibit and Witness Lists [ECF No. 2695]. Plaintiffs intentionally and voluntarily removed Andy Pyfer from their live stream and witness lists, explaining that "Mr. Pyfer, the original live stream designee, was removed . . . pursuant to

Special Master Cohen’s witness reduction ruling.” Relying on this statement and the Plaintiffs’ witness lists, counsel for Teva, Cephalon and Actavis immediately notified Mr. Pyfer’s counsel.¹ Four days later, on October 9, 2019, Plaintiffs’ filed a Second Amended Live Stream Witnesses List [ECF No. 2753] adding Mr. Pyfer back to their live stream designation. Notably, **Mr. Pyfer is not on Plaintiffs’ witness list**, nor is he on the witness list of any other party. Moreover, pursuant to Federal Rule of Civil Procedure 43, and this Court’s pretrial orders governing witness lists, Teva, Cephalon and Actavis object because Mr. Pyfer is a non-party, outside the Court’s subpoena power, who has been deposed and for whom Plaintiffs have not shown good cause or compelling circumstances to take his testimony by contemporaneous transmission from a different location.

Plaintiffs voluntarily and purposely removed Mr. Pyfer from their October 5, 2019 witness lists, which lists are the governing witness lists for purposes of the trial. Because Plaintiffs did not include Mr. Pyfer in their October 5, 2019 submission, they waived their right to do so now or in the future absent permission from the Court.

In their Second Amended Designated Live Stream Witnesses List, Plaintiffs explain that “[a]s a result of the inclusion of Cephalon as a stand-alone defendant, Plaintiffs now designate Colleen McGinn by deposition transcript.” Plaintiffs’ rationale should be rejected. Cephalon has been a party to this litigation since the original complaints were filed in 2017, and has always been a separately named defendant. Plaintiffs have also known of Mr. Pyfer, a former Cephalon employee, and intentionally removed him from their witness lists.

¹ Mr. Pyfer has not been employed by Teva / Cephalon since 2010 and has engaged separate counsel to represent him for his deposition in this matter. That counsel, Saul Ewing, continues to represent him today.

For these reasons, Teva, Cephalon and Actavis object to Plaintiffs' attempt to list Mr. Pyfer as a live stream company witness. Plaintiffs should be precluded from untimely adding Mr. Pyfer to their live stream and trial witness list at this late date.

Dated: October 10, 2019

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. If electronic notice is not indicated through the court's e-filing system, a true and correct copy of the foregoing document was delivered via electronic mail or U.S. Mail.

Dated: October 10, 2019

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